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JUN 18 2010
OFFICE OF PETITIONS

In re Patent No. 7,379,981
Issue Date: May 27, 2008
Application No. 10/040,150
Filed: January 2, 2002
Attorney Docket No. MESH.0020000

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)
: and
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition filed May 18, 2010, under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed non-provisional applications, and under 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional applications, which are set forth in the amendment filed with the petition.

The petition is DISMISSED.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Application no. 10/040,150 which was filed after November 29, 2000, matured into Patent No. 7,379,981 on May 27, 2008. The claim for the benefit of priority to a prior-filed nonprovisional application was submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The petition is not compliance with the requirements for a grantable petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) in that (1) a reference to the above-noted, prior-filed nonprovisional application has not been included in a certificate of correction and (2), the certificate of correction fee has not been submitted. Thus, the instant petition for

acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 and 35 U.S.C. §119(e) to the above-noted, prior-filed nonprovisional and provisional applications does not satisfy the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6).

Before the petition under 37 CFR § 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition and a certificate of correction and appropriate fee will need to be submitted.

Finally, receipt is also acknowledged of the revocation and power of attorney signed by assignee. However, a review of the power of attorney discloses that it is unacceptable since it is not in compliance with 37 CFR 3.73(b) in that the putative assignee has not established its right to take action in accordance with 37 CFR 3.73(b). Specifically, petitioners have not provided documentary evidence of a chain of title from the original owner to the assignee, nor shown that documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*i.e.* reel and frame number). Upon completion and submission of a Certificate Under 37 CFR 3.73(b) form, the power of attorney will be acceptable.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.


Chris Bottorff
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